Federal Court  Cour fédérale

Date: 20100610

Docket: IMM-2971-10

Citation: 2010 FC 619

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, June 10, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALEJO MARTINEZ, MARTHA LORENA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary remarks

[1] The practice of reiterating and submitting new documents or arguments on matters that have or ought to have been decided by the Refugee Protection Division (RPD) does not constitute new evidence. In *Abdollahzadeh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1310, 325 F.T.R. 226, the Court reached the following conclusions:

> [27] What Parliament does not want is to have the PRRA application become a disguised second refugee claim. By limiting the evidence to new information for a refused refugee claimant's PRRA application, it is clearly indicated that the intended objective is to analyze the application for protection taking into consideration the situation after the RPD decision, all subject to certain adaptations regarding some earlier evidence according to the wording of section 113 of the IRPA and the interpretation given by Sharlow J. and Mosley J.
>
> [28] Bearing in mind what is stated above regarding paragraph 113(a) of the IRPA and the Raza judgment (supra) of the Court of Appeal, PRRA application and that he explained in detail his findings in regard to its probative value (the credibility of the evidence, while considering the source and the circumstances surrounding the existence of the information, its trustworthiness, its element of novelty and its high degree of importance). He did so by taking into consideration not only the date of the information but also the aspect of novelty or lack thereof with reference to the evidence before the RPD, the RPD's findings and whether or not the information was available at the time of the RPD hearing as well as whether or not it was reasonable to expect that she present this information to the RPD. An analysis such as this satisfies the standards contained under paragraph 113(a) of the IRPA and the Court has no reason to intervene because the PRRA officer's decision was reasonable. Officer Perreault considered the relevant information and he made the appropriate determinations considering the circumstances of the matter.

[2] When assessing irreparable harm, it has often been determined by this Court that one can take into consideration decisions of the Refugee Protection Division, as well as determinations that the claimant lacks credibility:

> [38] On a motion for a stay of a removal order, an applicant cannot allege the same risks that were dismissed at the RPD and PRRA stages.
>
> > [2] . . . Moreover, his allegations on that point are substantially the same as the ones raised when his claim was before the Immigration and Refugee Board. His allegations— then assessed and dismissed because they were not credible—cannot be the basis of an allegation of irreparable harm (see, for example, *Akyol v. The Minister of Citizenship and Immigration*, [2003] F.C.J. No. 1182, 2003 FC 931).
> >
> > (*Dimouamoua v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 940, [2005] F.C.J No 1172 (QL).) [Emphasis added.]

(*Duran v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 738, [2007] F.C.J. No 988 (QL)).

II. Legal proceeding

[3] This is a motion by the applicant to obtain an order staying her removal from Canada to Mexico scheduled for June 14, 2010. The motion is joined to an application for leave and judicial review of the decision by the Pre-Removal Risk Assessment (PRRA) officer, dated March 23, 2010.

III. Background

[4] The applicant, Ms. Martha Lorena Alejo Martinez, is a citizen of Mexico. She arrived in Canada on February 25, 2008 in Toronto and was admitted as a temporary resident until March 10, 2008. Ms. Alejo Martinez claimed refugee protection in Montréal on March 25, 2008.

[5] On July 14, 2009, the RPD determined that Ms. Alejo Martinez was neither a Convention refugee nor a person in need of protection, thereby rejecting her claim for refugee protection. The RPD further found that there was no credible basis to the claim.

[6] On October 27, 2009, the application for leave and judicial review of the RPD decision was dismissed by the Federal Court.

[7] On March 23, 2010, the PRRA application was dismissed.

IV. Analysis

[8] The Court agrees with the respondent's position.

[9] In order to evaluate the merits of the motion to stay, the Court must determine whether the applicant meets the tests laid down by the Federal Court of Appeal in *Toth v. Canada (Minister of Employment and Immigration)* (1988), N.R. 6 (F.C.A.) L.R. (2d) 123, 86 N.R. 302 (F.C.A.).

[10] In this proceeding , the Federal Court of Appeal adopted three tests that it imported from the case law on injunctions, specifically from the Supreme Court of Canada decision in *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110. These three tests are as follows:

A. the existence of a serious issue;

B. the existence of irreparable harm; and

C. the assessment of the balance of convenience.

[11] The three criteria must be met for this Court to grant the requested stay. If one of them is not met, the Court cannot grant the stay.

[12] The applicant failed to demonstrate that there was a serious issue to be tried in her application for leave respecting the officer's decision, that irreparable harm would result from her removal to Mexico or that her inconvenience would be greater than that caused to the public interest

in ensuring that the immigration process provided for in the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), follows its course.

A. Serious issue

[13] It is clear from the PRRA decision that the officer conducted a thorough examination of Ms. Alejo Martinez's submissions.

[14] The officer noted that there was little new evidence in the case and that it was not his role to reassess evidence that was before the RPD in 2009. The officer reproduced paragraph 113(*a*) of the IRPA in his notes. He summarized them as follows at page 5 of his decision:

> [TRANSLATION]
>
> The claimants submitted testimony of their respective mothers and of a police officer who was apparently a colleague of the female claimant's father, who is a policeman. [February 5 and 8, 2010.] However, this evidence fails to meet the requirements set out in paragraph 113(*a*) of the IRPA. This evidence was obtained from sources that were not formally identified, at the last minute, i.e. when their removal became imminent, brings nothing new of any substance, and appears to be nothing more than adjustments to support their testimony that had already been found to be not credible by the RPD. The claimants have not indicated that this evidence was not reasonably available or that they could not reasonably have been expected to have presented it at the time of the rejection.

[15] The officer's assessment is consistent with the case law of this Court.

[16] In *Abdollahzadeh*, above, rendered in December 2007, Justice Simon Noël, echoing the reasons delivered by the Federal Cour of Appeal in *Raza v. Canada (Minister of Citizenship and*

Immigration), 2007 FCA 385, 162 A.C.W.S. (3d) 1013, noted that a PRRA is neither an appeal nor another level of review of the RPD decision:

> Very recently, the Court of Appeal rendered a judgment following the certification of two questions by Mosley J. in regard to section 113 of the IRPA (see *Raza et al. v. MCI, FCA v. MCI*, 2007 FCT 385 Madam Justice Sharlow, on behalf of the Court, dismissed the appeal, adopted the reasoning of Mosley J. (see paragraph 16) and commented on the content of section 113 of the IRPA (see paragraph 13). She took the time to state once again that PRRA procedure is not an appeal or an application for review of the RPD decision given that Parliament clearly intended to limit the evidence presentable in the context of such a procedure (see paragraph 12). [Emphasis added.]

[17] Ms. Alejo Martinez has not demonstrated that the officer's factual findings were unreasonable.

B. Irreparable harm

[18] Ms. Alejo Martinez did not indicate in her affidavit that she feared for her life if she were to be returned to Mexico.

[19] In the case of *Kerrutt v. Canada (Minister of Employment and Immigration)* (1992), 53 F.T.R. 93, 32 A.C.W.S. (3d) 621, the Court defined irreparable harm as returning a person to a country where his or her safety or life would be in jeopardy. According to the same decision, it cannot be a mere matter of personal inconvenience or the division of a family.

[20] In support of her PRRA application, Ms. Alejo Martinez reiterated the same allegations as those that had been made before the RPD.

[21] The RPD determined that Ms. Alejo Martinez's account was not credible. Furthermore, it found that Ms. Alejo Martinez had not rebutted the presumption of adequate state protection, and had not discharged the burden of establishing that there was no internal flight alternative open to her.

[22] Ms. Alejo Martinez had not demonstrated irreparable harm.

[23] As a result, and in the absence of a serious issue to be tried by this Court, the harm the applicant alleges has not been demonstrated.

C. Balance of convenience

[24] In the absence of serious issues and irreparable harm, the balance of convenience favours the Minister, who has an interest in having a removal order enforced on the scheduled date (*Mobley v. Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No. 65 (QL/Lexis) at paragraph 2).

[25] In fact, subsection 48(2) of the IRPA provides that a removal order must be enforced as soon as it is reasonably practicable.

Enforceable removal order	Mesure de renvoi
48. (1) A removal order is enforceable if it has come into force and is not stayed.	**48.** (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
Effect	Conséquence

(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent.

[26] Justice Barbara Reed, in *Membreno-Garcia v. Canada (Minister of Employment and Immigration)* [1992] F.C. [1992] F.C.J. No. 535 (QL), discussed the issue of balance of convenience in regard to a stay application and the public interest that must be considered:

> [18] What is in issue, however, when considering balance of convenience, is the extent to which the granting of stays might become a practice which thwarts the efficient operation of the immigration legislation. It is well known that the present procedures were put in place because a practice had grown up in which many cases, totally devoid of merit, were initiated in the court, indeed were clogging the court, for the sole purpose of buying the appellants further time in Canada. There is a public interest in having a system which operates in an efficient, expeditious and fair manner and which, to the greatest extent possible, does not lend itself to abusive practices. This is the public interest which in my view must be weighed against the potential harm to the applicant if a stay is not granted.

V. Conclusion

[27] In light of all the foregoing, the applicant has not satisfied the jurisprudential tests for obtaining a judicial stay.

[28] For all of these reasons, the motion for a stay of the execution of the removal order is dismissed.

JUDGMENT

THE COURT ORDERS that the motion for a stay of the removal order made against the applicant be dismissed.

"Michel M.J. Shore"
Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2971-10
STYLE OF CAUSE:	ALEJO MARTINEZ MARTHA LORENA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 7, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	June 10, 2010

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